

THE LIMITS—AND THE CREATIVITY CHALLENGE— OF INDUSTRIAL POLICY FOR CLIMATE AND JUSTICE

BY

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During the Biden Administration, industrial policy became the central means for making progress on both climate change and social justice. This Article, prepared for the Environmental Law Review's Spring Symposium, uses the frame of Joanna Macy's Great Turning to critique the use of industrial policy as a means of promoting enduring systemic change in climate and justice. Although recent major statutes offered possibilities toward such change, they also worked at cross purposes, further entrenching the status quo. Nor is our system of administrative law equipped to meaningfully facilitate such change, given that it too reflects default presumptions and business-as-usual proclivities. Yet there are a host of ways for lawyers, scholars, jurists, and policymakers to participate in both holding actions and efforts to promote structural change. The call of this Article is to keep sight of creativity, working to align activities in this moment with a different vision altogether, in service of a more just and sustainable future.

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I. INTRODUCTION

Climate change is here, regardless of who controls the three branches of the federal government. Whether it can be mitigated and adapted to while attending to justice and equity is a question of great concern, with time and lives lost for every setback in law and policy. With the Trump Administration's decimation of programs designed to support a just transition¹—and urgent constitutional issues looming²—one wonders how our legal system can support a world where people and the environment thrive. Layer in significant anti-administrativism in the judicial branch,³ and it can be hard to discern what is left.

Before the 2024 presidential election, new hope for a just transition had become linked to industrial policy.⁴ The Infrastructure and

¹ See, e.g., Unleashing American Energy, Exec. Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 29, 2025) (prioritizing, among other things, the production and burning of fossil fuel, eliminating the social cost of carbon metric, and halting Department of Energy climate- and justice-oriented funding under the Infrastructure Investment and Jobs Act and Inflation Reduction Act); Ending Radical and Wasteful Government DEI Programs and Preferencing, Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 29, 2025) (calling for, among other things, the termination of all environmental justice-oriented positions in the federal government); Protecting the American People Against Invasion, Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 20, 2025) (calling for, among other things, “efficient removals” of certain noncitizens and the construction of detention facilities); Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025) (establishing, among other things, U.S. policy of denying the existence of transgender, nonbinary, and intersex people and calling for the elimination of legal protections for such people). I advance a thick view of just transition, which is not necessarily what the Biden Administration espoused. See *Just Transition*, MOVEMENT GENERATION, <https://movementgeneration.org/justtransition/> [<https://perma.cc/6S4T-SLJT>] (last visited Oct. 2, 2025) (presenting a framework for just transition centered on “strategies that **democratize**, **decentralize** and **diversify** economic activity while we **damper down** consumption and **(re)distribute** resources and power”) (emphasis in original).

² For a litigation tracker, see *Litigation Tracker: Legal Challenges to Trump Administrative Actions*, JUST SEC., <https://www.justsecurity.org/107087/tracker-legal-challenges-trump-administration-actions> [<https://perma.cc/6TL4-9XCK>] (last visited Oct. 2, 2025).

³ Gillian E. Metzger, *Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1, 4 (2017).

⁴ See, e.g., Daniel A. Farber, *Turning Point: Green Industrial Policy and the Future of U.S. Climate Action*, 11 TEX. A&M L. REV. 303, 306 (2024) (contending that in addition to their direct effects, Biden-era statutes stand to spur “mutually reinforcing positive feedback loops”); Shelley Welton, *Environmental Justice via Industrial Policy*, CTR. FOR PROGRESSIVE REFORM (Nov. 8, 2023), <https://progressivereform.org/cpr-blog/environmental-justice-via-industrial-policy/> [<https://perma.cc/5G95-TWXA>] (identifying questions that must be answered to ensure that environmental justice benefits flow from new industrial policy).

Investment and Jobs Act (IIJA)⁵ and Inflation Reduction Act (IRA)⁶ offered new economic incentives in the form of grants, loan guarantees, and tax credits to a host of carbon-reducing technologies.⁷ Many of these incentives included adders for developers that sited their projects in, for example, energy communities or low-income communities.⁸ These detailed statutory provisions seemed well-positioned to avoid many of the new judicial decisions limiting agency discretion to fight climate change.⁹ Moreover, the Biden Administration sought to implement these provisions consistent with an ambitious environmental justice and climate agenda.¹⁰

But these statutes also suffered from significant deficiencies from a just transition lens: for example, the statutes included big wins for fossil fuels and large-scale projects and little for climate adaptation.¹¹ Indeed, one of this Article's premises is that while there is some capacity for industrial policy to bring about meaningful collective shifts,¹² it is vastly incomplete and stands to result in continuing entrenchment of overconsumption and injustice. Although the constitutional crisis¹³ that

⁵ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at various non-contiguous sections of the U.S. Code).

⁶ Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (codified at various non-contiguous sections of the U.S. Code); *see also* Welton, *supra* note 4 (noting that the IRA has been heralded as ushering in a new way of doing "climate policy," referred to as "green industrial policy," and codifying environmental justice into its tax credits).

⁷ *See, e.g.*, Welton, *supra* note 4 (noting "hydrogen, carbon capture and storage, and nuclear infrastructure").

⁸ *See, e.g.*, DEPT OF ENERGY, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY, FEDERAL SOLAR TAX CREDITS FOR BUSINESSES 5–8 (2024), https://www.energy.gov/sites/default/files/2024-02/508%20Federal%20Solar%20Tax%20Credits%20for%20Businesses_Feb24.pdf [https://perma.cc/48AR-S94Q] (describing such incentives for solar investment and production tax credits).

⁹ *See infra* notes 58–59, 99, 107, 110, 120–21.

¹⁰ *See* ROBERT L. GLICKSMAN ET AL., ENVIRONMENTAL PROTECTION: LAW AND POLICY 43–44 (9th ed. 2023) (describing Biden Administration's key environmental justice policies).

¹¹ *See, e.g.*, Patrick Bigger et al., *Inflation Reduction Act: The Good, The Bad, The Ugly*, CLIMATE AND COMMUNITY PROJECT (Aug. 2, 2022), https://climateandcommunity.org/wp-content/uploads/2023/12/CCP-IRA_final-0803.pdf [https://perma.cc/8TN8-L9JD] (identifying deficiencies including "massive handouts to the oil and gas industry" that further burden sacrifice zones and inattention to climate change adaptation especially for disproportionately impacted communities).

¹² Capacity-building investments such as technical assistance grants provide an example policy lever for such purposes. *E.g.*, Biden-Harris Administration Announces \$177 Million for 17 New Technical Assistance Centers Across the Nation to Help Communities Access Historic Investments to Advance Environmental Justice, U.S. ENVT PROT. AGENCY (Apr. 13, 2023), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-177-million-17-new-technical-assistance-centers> [https://perma.cc/XUH2-Z3Z4]; *see also* Amy Kapczynski & Joel Michaels, *Administering a Democratic Industrial Policy*, 18 HARV. L. & POL'Y REV. 279, 282–83 (2024) (collecting various capacity-building mechanisms that can be attached to industrial policy).

¹³ *See* Adam Liptak, *Trump's Actions Have Created a Constitutional Crisis, Scholars Say*, N.Y. TIMES (Feb. 12, 2025), <https://www.nytimes.com/2025/02/10/us/politics/trump-constitutional-crisis.html> [https://perma.cc/J3NW-BNQK] (defining constitutional crisis as

is currently unfolding especially underscores this conclusion, it holds given even ordinary White House policy swings and skeptical courts. This analysis begs the question: what can lawyers, policymakers, and other actors within our legal system do?

The call of these times is to be creative—to imagine something different and take actions pointed to new alternatives.¹⁴ Indigenous scientist and Professor Robin Wall Kimmerer asks in *The Serviceberry: Abundance and Reciprocity in the Natural World*, “Can we imagine a system which nurtures a different economic identity and reclaim ourselves as neighbors, with shared investment in mutual wellbeing? . . . I mean, why not?”¹⁵ In *Imagination: A Manifesto*, African American studies Professor Ruha Benjamin invites all of us to quiet the “voice of the cynical, skeptical grouch that patrols the borders of our imagination.”¹⁶ Instead, she challenges us to envision a world “grounded in solidarity, in which our underlying interdependence as a species and with the rest of the planet is reflected back at us in our institutions and social relationships.”¹⁷

This Article examines these topics—the challenges of industrial policy and the urgent circumstances in which we find ourselves, plus the need for creativity in envisioning new pathways—according to the frame of environmental activist and scholar Joanna Macy’s *Great Turning*.¹⁸ Macy’s work in systems thinking, deep ecology, and Buddhism has proven influential to activists around the globe, but is seldom considered in legal discourse.¹⁹ Yet it can offer a set of lenses to theorize and envision a way forward, with meaningful roles for lawyers and others within the legal system to promote a more peaceful, sustainable, and just future.

“the product of presidential defiance of laws and judicial rulings” and providing copious examples).

¹⁴ See KAZU HAGA, HEALING RESISTANCE: A RADICALLY DIFFERENT RESPONSE TO HARM 228 (2020) (“We can build institutions, structures, and policies that are constantly reinforcing a new way of relating to each other.”).

¹⁵ ROBIN WALL KIMMERER, THE SERVICEBERRY: ABUNDANCE AND RECIPROCITY IN THE NATURAL WORLD 45 (2024).

¹⁶ RUHA BENJAMIN, IMAGINATION: A MANIFESTO 8 (2024).

¹⁷ *Id.*

¹⁸ Joanna Macy, *The Great Turning*, CTR. FOR ECOLITERACY (June 29, 2009), <https://www.ecoliteracy.org/article/great-turning> (“The Great Turning is a name for the essential adventure of our time: the shift from the Industrial Growth Society to a life-sustaining civilization.”). See generally WE ARE THE GREAT TURNING (Spotify, Sep. 25, 2025) (contextualizing Macy’s philosophy and scholarship during the present-day “time of global crisis” for a more “just and life-sustaining world”). Macy died in the summer of 2025. See Forum Team, *In Memory of Joanna Macy*, YALE F. ON RELIGION (July 24, 2025), <https://fore.yale.edu/blogs/entry/1753374033> [<https://perma.cc/RP7J-VMCU>] (offering tribute and collecting further resources).

¹⁹ Cf. Susan L. Brooks, *Reimagining Lawyering: Supporting Well-Being and Liberation*, 52 HOFSTRA L. REV. 1, 28–29 (2023) (encouraging lawyers to engage in practices taught by Joanna Macy for cultivating “active hope”); Catharine Pierce Wells, *The Perils of Race and Gender in a World of Legal Abstraction*, 34 U.S.F. L. REV. 523, 534 (2000) (applying Macy’s argument that despair work unleashes creativity and resilience in eco-activism to support confronting systems of oppression and injustice).

Specifically, in her influential book *World as Lover, World as Self*, Macy introduces a set of three stories that provides lenses for thinking about where we find ourselves and where we might go.²⁰ These stories are embedded in the structure of this Article, as described below.

In Part II, I attend to the first story, “Business-as-Usual,” which involves adherence to industrial growth society and the economic and social systems that emerged from global colonialism, with attendant exploitation of non-human nature and humanity.²¹ This status quo has operated in a feedback loop with industrial policy for hundreds of years.²² Part II examines the meaning of industrial policy within this frame and explores whether it allows incremental steps toward any alternatives. This is a different exploration of industrial policy than what is commonly found in the literature. Although some commentary references the United States’ industrial policy approach to climate change and justice, most work on industrial policy has focused on normative arguments about trade and economics.²³ As shown herein, industrial policy leans toward reinforcing existing norms even if it sometimes supports progress; this is especially so given contemporary conservative political and judicial attitudes toward the administrative state.

Part III is framed by the second story, “The Great Unraveling,” as told by a host of people around the world and by non-human nature itself. This story reflects the desperation of collapse: hurricanes decimate some communities²⁴ while others burn;²⁵ warfare and climate change drive people from their homes,²⁶ major ecosystems teeter on collapse,²⁷ and

²⁰ See generally JOANNA MACY, WORLD AS LOVER, WORLD AS SELF: COURAGE FOR GLOBAL JUSTICE AND ECOLOGICAL RENEWAL (2007) (outlining Macy’s three stories); see also WE ARE THE GREAT TURNING: *The Three Stories of Our Time* (Spotify, Apr. 25, 2024) (offering Macy’s presentation of the three stories in her own words).

²¹ *Three Stories of Our Times*, WORK THAT RECONNECTS NETWORK, <https://workthatreconnects.org/three-stories-of-our-times> [<https://perma.cc/YG4U-X5B2>] (last visited Oct. 2, 2025).

²² *Id.*

²³ Guri Bang, *The U.S. Inflation Reduction Act: Climate Policy as Economic Crisis Response*, 34 ENV’T POL. 1, 1–6 (2024); see *infra* text accompanying notes 58–69 (providing overview of literature).

²⁴ Haley Thiem & Rebecca Lindsey, *Hurricane Helene’s Extreme Rainfall and Catastrophic Inland Flooding*, CLIMATE.GOV (Nov. 7, 2024), <https://www.climate.gov/news-features/event-tracker/hurricane-helene’s-extreme-rainfall-and-catastrophic-inland-flooding> [<https://perma.cc/SZ6Z-4J2Q>] (documenting research linking extreme impacts to climate change).

²⁵ Angela Fritz, *LA Fires Were Larger and More Intense Because of Planet-Warming Pollution, Study Suggests*, CNN (Jan. 14, 2025, 11:20 PM), <https://www.cnn.com/2025/01/14/climate/los-angeles-fires-worse-global-warming/index.html> [<https://perma.cc/6C8A-4MC8>].

²⁶ E.g., Calvin Bryne, Note, *Climate Change and Human Migration*, 8 U.C. IRVINE L. REV. 761, 766–73 (2018) (describing climate-induced drivers of migration); Eliza Pan, *Reimagining the Climate Migration Paradigm: Bridging Conceptual Barriers to Climate Migration Responses*, 50 ENV’T L. 1173, 1183 (2020) (collecting drivers of climate migration).

²⁷ E.g., Damian Carrington, *Ecosystem Collapse ‘Inevitable’ Unless Wildlife Losses Reversed*, THE GUARDIAN (Feb. 24, 2023, 11:00 AM), <https://www.theguardian.com/environment/2023/feb/24/ecosystem-collapse-wildlife-losses-permian-triassic-mass-extinction->

democracies weaken globally,²⁸ while the divide between those with power and those who are oppressed only grows.²⁹ This is the story with which environmental law must be concerned. Yet environmental law is itself a product of industrial growth society and it prioritizes industrial growth—a critique long offered by the environmental justice movement.³⁰ Contextualized with contemporary Supreme Court doctrine and the Trump Administration’s aggressive dismantling of not just progressive policies but of fundamental premises of our constitutional structure,³¹ this moment in time illuminates the imperative of new thinking.

Part IV is centered on the third story, “The Great Turning,” which anticipates a shift to our interconnectedness, from “exploitation to respect, from extraction to regeneration, from competition to cooperation,” with “[m]ovements for social justice provid[ing] essential leadership as we repair and renew the living systems of the earth.”³² This story offers a host of concrete ways to contribute to that change, including roles for lawyers and policymakers. It also acknowledges that law itself is fully interconnected with culture such that the two cannot truly be understood as distinct from one another.³³ This understanding of the law offers a greater sense of meaning for those of us whose efforts focus on the legal system,³⁴ making space to imagine what else is possible.

study [<https://perma.co/Q3EN-GPKF>] (detailing scientific research on relationship between biodiversity loss and mass extinction).

²⁸ E.g., INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, THE GLOBAL STATE OF DEMOCRACY 2024: STRENGTHENING THE LEGITIMACY OF ELECTIONS IN A TIME OF RADICAL UNCERTAINTY 1–2 (2024), <https://cdn.sanity.io/files/2e5hi812/production-2024/0134f4cc56156db21ee23cf1072ab6d71704cd51.pdf> [<https://perma.cc/K26W-SR3Y>] (reporting global challenges to democracy as indicated by, *inter alia*, election quality decline, low voter turnout, and increased riots and protests following elections).

²⁹ Madeline Brown et al., *Nine Charts About Wealth Inequality in America*, URB. INST. (Apr. 25, 2024), <https://apps.urban.org/features/wealth-inequality-charts> [<https://perma.cc/8T2T-NYH4>].

³⁰ See, e.g., Robert Benford, *The Half-Life of the Environmental Justice Frame: Innovation, Diffusion and Stagnation*, in POWER, JUSTICE, AND THE ENVIRONMENT: A CRITICAL APPRAISAL OF THE ENVIRONMENTAL JUSTICE MOVEMENT 37–53 (David N. Pellow & Robert J. Brulle eds., 2005); Julie Sze & Jonathan K. London, *Environmental Justice at the Cross-roads*, 10 SOCIO. COMPASS 1331, 1333–37 (2008).

³¹ This includes following judicial orders. See, e.g., Sam Levine, *Trump’s Defiance of Court Orders is ‘Testing the Fences’ of the Rule of Law*, THE GUARDIAN (Mar. 23, 2025), <https://www.theguardian.com/us-news/2025/mar/23/judges-trump-court-rulings> [<https://perma.cc/6XBY-W6RE>]. It also includes attacks on higher education, the press, targeting law firms, and holding or deporting people without due process. See *infra* notes 144–47, 153.

³² *Three Stories of Our Times*, *supra* note 21.

³³ See Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 46–47 (2001) (“Law is recognized as both constituting and being constituted by social relations and cultural practices.”).

³⁴ See NATIONAL TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE app. at 56 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> [<https://perma.cc/4PR4-S38D>] (identifying meaning and purpose as core factors for lawyer and law student mental health).

II. BUSINESS-AS-USUAL: INDUSTRIAL POLICY AS CLIMATE-POLICY

U.S. climate policy suffers from a frustrating lack of commitment and durability. First, of course, Congress has yet to pass any legislation that regulates or taxes greenhouse gas (GHG) emissions.³⁵ As a result, much of the effort has been left to federal agencies' implementation of their statutory mandates.³⁶ This approach, however, is susceptible to changing presidential administrations and an increasingly conservative federal judiciary. With respect to the former, President Trump's second term began with, among other things, policy rollbacks and spending prohibitions on both justice and climate-related programs.³⁷ With respect to the latter, a host of recent Supreme Court opinions—part of a broader conservative anti-administrativism³⁸—have sharply curtailed agency flexibility to implement justice and climate-protective change.

Take the well-known example of the Obama-era Clean Power Plan (CPP), which aimed to regulate the GHG emissions from existing power plants under the Clean Air Act (CAA).³⁹ The CPP attracted criticism for its approach, which contemplated, among other things, shifting from polluting to clean sources of electricity.⁴⁰ Lawsuits were filed, but before the courts could review the matter, however, the first Trump Administration rolled back a host of climate-change policies, and substituted the toothless Affordable Clean Energy (ACE) rule for the CPP.⁴¹ Then the Biden Administration notified the courts that it intended to develop a new rule that would take the CPP's place.⁴² Despite this assurance of mootness, the Supreme Court granted certiorari and

³⁵ The 2009 Waxman-Markey Bill, which passed in the U.S. House of Representatives but failed to pass in the Senate, would have established carbon emissions caps for the United States. American Clean Energy and Security Act of 2009, H.R. 2454, 111th Cong. (2009).

³⁶ See, e.g., Massachusetts v. EPA, 549 U.S. 497 (2007) (rejecting Bush EPA's determination not to regulate greenhouse gas emissions from new motor vehicles pursuant to the Clean Air Act, and holding the Act's term "air pollutant" is capacious enough to include greenhouse gases); Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496, 66497 (Dec. 15, 2009) (to be codified at 40 C.F.R. ch. 1) (concluding greenhouse gas emissions endanger human health and welfare and establishing premise for future regulation under CAA).

³⁷ See sources cited *supra* note 1.

³⁸ Metzger, *supra* note 3, at 3.

³⁹ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64662, 64663 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).

⁴⁰ See Emily Hammond & Richard J. Pierce, Jr., *The Clean Power Plan: Testing the Limits of Administrative Law and the Electric Grid*, 7 GEO. WASH. J. ENERGY & ENV'T. L. 1, 1–2 (2016) (describing legal vulnerabilities in the CPP).

⁴¹ The ACE rule would have required only heat-rate improvements at existing fossil-fueled power plants and was not expected to lead to major decreases in GHG emissions. *Fact Sheet: The Affordable Clean Energy Rule*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/sites/default/files/2019-06/documents/bser_and_eg_fact_sheet_6.18.19_final.pdf [https://perma.cc/76ZB-DXWQ] (last visited Oct. 2, 2025).

⁴² See Brief for the Federal Respondents at 10, *West Virginia v. EPA*, 597 U.S. 697 (2022) (No. 20-1530) (detailing history), 2022 WL 216161.

ultimately struck down the CPP in *West Virginia v. EPA*.⁴³ Of course, in doing so, the Supreme Court issued a watershed decision officially announcing the Major Questions Doctrine (MQD).⁴⁴ Only two years later, the Court's *Loper Bright Enterprises v. Raimondo*⁴⁵ decision overturning *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*⁴⁶ further entrenched judicial skepticism of agencies' environmentally protective work.⁴⁷

If this were all that had happened, to what extent might the Biden-era industrial policy statutes provide some basis for climate and justice progress? As noted in the Introduction, because of their textual specificity, many of these programs might avoid the most scrutinizing judicial doctrines. The MQD, for example, insists that Congress, rather than the agencies, is the maker of major policy decisions.⁴⁸ Thus, "clear congressional authorization" must justify agencies' use of their regulatory power.⁴⁹ Although there is some question about the relevance of MQD after *Loper Bright*,⁵⁰ the MQD reinforces clear-statement principles and non-delegation norms that courts are sure to use in other cases.⁵¹ And *Loper Bright*, of course, instructs that courts are the interpreters of agencies' statutory mandates, eliminating deference to reasonable agency interpretations should statutory language be unclear.⁵²

On a macro scale, much of the IIJA and IRA avoids these kinds of concerns. For example, Congress was quite specific in the IIJA when it

⁴³ *West Virginia v. EPA*, 597 U.S. at 734–35.

⁴⁴ *Id.* at 721–24; Mila Sohoni, *The Major Questions Quartet*, 136 HARV. L. REV. 262, 275 (2022) (critiquing the Court's lack of justification for the MQD). Scholars had anticipated this development as part of a judicial trend of increasing skepticism of regulatory efforts. *E.g.*, Lisa Heinzerling, *The Supreme Court's Clean-Power Power Grab*, 28 GEO. ENV'T L. REV. 425, 439 (2016) ("[T]he Supreme Court has opened a new world of opportunity for those disappointed with agency regulations.").

⁴⁵ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

⁴⁶ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc. (Chevron)*, 467 U.S. 837 (1984).

⁴⁷ There remains room for deference to agencies' policymaking and expertise through ordinary arbitrary-and-capricious review. *See, e.g.*, Lisa Schultz Bressman, *Lower Courts After Loper Bright*, 31 GEO. MASON L. REV. 499, 504–05 (2024) (arguing courts retain discretion to frame interpretive issues as policy decisions justifying deference); Emily Hammond, *Finding a Place for Expertise After Loper Bright*, 31 GEO. MASON L. REV. 559, 566–67 (2024) (arguing deference to expertise is both intact and normatively justified).

⁴⁸ *West Virginia v. EPA*, 597 U.S. at 723 (citing *United States Telecom Assn. v. FCC*, 855 F.3d 381, 419 (CADC 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc)).

⁴⁹ *Id.*

⁵⁰ MQD evolved as an exception to *Chevron* deference. *See King v. Burwell*, 576 U.S. 473, 485 (2015) (explaining that *Chevron* does not apply for certain "extraordinary cases").

⁵¹ It is likely relevant to the remaining *Skidmore*-type analysis as a limiting principle, and it may also be relevant for its potential nondelegation underpinnings. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining agency interpretation are entitled to respect based on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control"); *see also* Sohoni, *supra* note 44, at 275 (outlining potential nondelegation basis for MQD).

⁵² *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).

directed the creation of a Joint Office of Energy and Transportation⁵³ to carry out itemized responsibilities meant to provide technical assistance and grant funding to state electric vehicle (EV) programs.⁵⁴ Congress also directed the creation of the Office of Clean Energy Demonstrations within DOE and gave that new entity express authorizations to coordinate the funding of clean energy demonstration projects funded under the Act.⁵⁵ And Congress seemed to take as a given much of EPA's statutory authority to regulate greenhouse gas emissions under the Clean Air Act, diminishing worries about at least some of the scope of the agency's regulatory power over motor vehicles and power plants.⁵⁶ In other words, the specificity of statutory provisions like these leaves little to agencies' interpretive imaginations and obviate the specter of massive judicial invalidation on interpretive grounds.⁵⁷

Much of this congressional industrial policy, then, answers the call of recent Supreme Court decisions by establishing concrete legislative instructions for agencies' implementation. Nevertheless, industrial policy faces an interrelated set of challenges: 1) it tends to reinforce Business-as-Usual despite that 2) it can be shaped somewhat to advance justice

⁵³ 23 U.S.C. § 151.

⁵⁴ *Id.* § 151(f) (detailing considerations for awarding grants).

⁵⁵ 42 U.S.C. § 18861. To be clear, there is considerable debate concerning how clean this "clean energy" is. For example, the Office of Clean Energy Demonstrations (OCED) oversees the funding of Regional Hydrogen Hubs, which require statutorily mandated "feedstock diversity," including that at least one such hub shall rely on fossil fuels. *Id.* § 16161a(c)(3)(A)(i). In addition, at least two such hubs must be located in natural-gas producing regions of the United States. *Id.* § 16161a(c)(3)(D). As another example, the IIJA contemplates pairing carbon capture with fossil-fueled power generation. *E.g., id.* § 18761(a)(1)(E) (defining this pairing as a clean energy project for demonstrations on mine land); *id.* § 41004 (establishing funding for carbon capture demonstration and pilot programs).

⁵⁶ Farber, *supra* note 4, at 320–22 (describing EPA's reliance on IIJA and IRA provisions in its regulatory justifications); see Greg Dotson & Dustin Maghamfar, *The Clean Air Act Amendments of 2022: Clean Air, Climate Change, and the Inflation Reduction Act*, 53 ENV'T L. REP. 10017, 10026–28 (2023) (detailing legislative history and Congress's choices in attending to GHG emissions in the IRA). *But see* Jonathan H. Adler, *Why the IRA Does Not "Grant" the EPA "Broad Authority to Shift America Away from Burning Fossil Fuels*, THE VOLOKH CONSPIRACY (Aug. 24, 2022), <https://reason.com/volokh/2022/08/24/why-the-ira-does-not-grant-the-epa-broad-authority-to-shift-america-away-from-burning-fossil-fuels/> [<https://perma.cc/93UZ-8XSQ>] (arguing that the IRA reinforces section-specific understandings of greenhouse gases as air pollutants rather than amounting to wholesale adoption of the act-wide definition in *Massachusetts v. EPA*, 549 U.S. 497 (2007)). The IIJA and IRA also authorized EPA to administer over \$41 billion in grant funding for greenhouse gas reduction and climate resilience. As of January 20, 2025, EPA obligated about 96 percent of these funds, and it had expended about 49 percent. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-108135, OVERSIGHT OF EPA AND DOE SPENDING: IMPLEMENTING REMAINING GAO RECOMMENDATIONS COULD HELP ADDRESS IDENTIFIED CHALLENGES 8 (2025) [hereinafter GAO REPORT], <https://www.gao.gov/assets/880/876090.pdf> [<https://perma.cc/744N-N2TM>].

⁵⁷ Moreover, these delegations are quite specific, minimizing their susceptibility to non-delegation challenges. *Cf. FCC v. Consumers' Rsch.*, No. 24-254, 2025 WL 1773630, at *3–4 (U.S. June 27, 2025) (upholding the FCC's universal-service scheme under the intelligible principle test because § 254's sufficient cap and mandatory, enumerated service-and-beneficiary criteria provide determinate standards that cabin agency discretion).

goals which, 3) in any event, are not necessarily durable. To explore these points, this Article will draw from the work of the Department of Energy's (DOE) Loan Programs Office (LPO) and its accompanying statutory authorities, especially those under the IIJA and IRA. This exploration yields a close look at how Congress has created industrial policy for clean-energy as well as fossil-fueled sectors within LPO authority and how both Congress and the agency have attended to equity values within that space. Before considering the LPO, however, it is helpful to review some features of industrial policy.

A. Industrial Policy

What is industrial policy? "American industrial policy is at least as old as the Constitution,"⁵⁸ and it has been called an "intentional attempt by the government to directly influence investment and resource allocation decisions by private companies" which "aims to ensure societal goals are reached that a market [otherwise] will not deliver."⁵⁹ Those societal goals are often conceptualized in global terms: "Industrial policy seeks to micromanage the economy in response to changes in the international economy by promoting the development of industries the government considers strategic."⁶⁰ Some call industrial policy "the deliberate attempt to shape different sectors of the economy to meet public aims," using sector-specific tools.⁶¹ Others offer that "industrial policies are classic examples of capitalist control mechanisms."⁶² Ultimately, industrial policy is a product of political decision-making, linked to democracy through Congress.⁶³

Much of the industrial policy literature involves classic economics, with proponents and detractors aligned according to their preferences for free-market competition.⁶⁴ But "[n]o examination of industrial policy, however thorough, can settle fierce debates over the proper role of

⁵⁸ Jim Chen & Daniel J. Gifford, *Law as Industrial Policy: Economic Analysis of Law in a New Key*, 25 U. MEM L. REV. 1315, 1322 (1995). To be clear, this included preferences for Southern states, including protecting the institution of enslavement. *Id.* at 1324.

⁵⁹ Wilfred Dolsma & Łukasz Mamica, *Industrial Policy—An Institutional Economic Framework for Assessment*, 54 J. ECON. ISSUES 349, 349 (2020).

⁶⁰ Chris Hewitt, Note, *Enhancing International Competitiveness: Structural Impediments to an Industrial Policy for the United States*, 25 L. & POL'Y INT'L BUS. 257, 258 (1993).

⁶¹ Kapczynski & Michaels, *supra* note 12, at 286.

⁶² Andrew Schrank & Josh Whitford, *Industrial Policy in the United States: A Neo-Polyanyian Interpretation*, 37 POL. & SOC'Y 521, 523 (2009).

⁶³ Kapczynski & Michaels, *supra* note 12, at 292 (outlining various industrial political considerations).

⁶⁴ E.g., Roger Pilon, *On the Folly and Illegitimacy of Industrial Policy*, STAN. L. & POL'Y REV., Fall 1993, at 103, 104 (arguing capitalism is preferable and industrial policy lacks a constitutional basis). There is a market fundamentalist critique of industrial policy, which paints markets as self-regulating means to optimize production. Schrank & Whitford, *supra* note 62, at 523 (collecting sources). Some frame markets as self-regulating means to optimize production, while others worry that government regulation is both necessary and too hard to achieve cohesively in a political system like that of the United States. *Id.* at 534 (collecting further sources).

government in market-based economies.”⁶⁵ As a descriptive matter, it is hard to name only one industrial policy amid the vast U.S. economic and regulatory systems. Industrial policy in the United States is fragmented; it is marked by inconsistencies across sectors.⁶⁶ One take on the diversity in approaches and geography is that “[b]y letting one thousand flowers bloom . . . U.S. industrial policy makers make sure that they will not back the wrong horse—or that if they do, the consequences are unlikely to be tragic.”⁶⁷ Indeed, Schrank and Whitford’s network theory of industrial policy formation seems to match what we can observe in the IIJA and IRA; the statutes cover a vast array of sectors and geographic diversity,⁶⁸ and seem to espouse a “try everything” approach.⁶⁹ As I will describe shortly, this feature could also be considered a flaw for climate and justice aims in that it bolsters both fossil-fueled and cleaner energy.

But first, consider that if industrial policy fits hand-in-glove with capitalist systems, a central challenge for a just transition is that capitalist systems are inherently unjust.⁷⁰ A variety of critical literatures have exposed the unjust underpinnings of various specific industrial policies, even if they were not presented in those terms. In essence, our history of industrial policy is also a history of environmental

⁶⁵ Chen & Gifford, *supra* note 58, at 1346.

⁶⁶ *Id.* at 1332 (“Although public choice theory readily explains many instances of incoherence in American industrial policy, the legal academy has rarely acknowledged its own indirect contribution to that incoherence.”); *cf.* Kapczynski & Michaels, *supra* note 12, at 286–87 (arguing sector-specific approaches that allow for tailoring policy to specific public aims and for addressing matters of scale in each sector).

⁶⁷ Schrank & Whitford, *supra* note 6262, at 535.

⁶⁸ *Id.*

⁶⁹ Overall, the IIJA and IRA seem to reflect a neo-Polanyian view, which predicts both that U.S. policymakers will adopt industrial policy, and that the U.S. economy will benefit. *Id.* at 535–36; *see, e.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at various non-contiguous sections of the U.S. Code). Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (codified at various non-contiguous sections of the U.S. Code). This approach seems to align at least partially with what has been called abundance liberalism or supply-side progressivism. *See* Paul Glastris & Nate Weisberg, *The Meager Agenda of Abundance Liberals*, WASH. MONTHLY (Mar. 23, 2025), <https://washingtonmonthly.com/2025/03/17/the-meager-agenda-of-abundance-liberals/> [<https://perma.cc/QY44-BPK4>] (describing this policy stance and critiquing its failure to grapple with corporate power or “capacity-starved bureaucracies”).

⁷⁰ *See* KARL MARX, CAPITAL: CRITIQUE OF POLITICAL ECONOMY 247–49 (Paul Reitter & Paul North, eds., 2024); *see also* David Singh Grewal, *The Laws of Capitalism*, 128 HARV. L. REV. 626, 627 (2014) (reviewing THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014), and asserting that this work “may be summed up in three words: capitalism generates inequality”). For an exploration that includes contemporary dimensions, *see* Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2172–75 (2013). For a look at English origins of capitalism and its spread to colonial North America, *see* STEVEN STOLL, RAMP HOLLOW 37–86 (2017).

exploitation,⁷¹ worker exploitation,⁷² racism,⁷³ and patriarchy.⁷⁴ For example, U.S. industrial policies⁷⁵ promoting dairy milk production in excess of demand were premised on both a need for working mothers' labor and the idea that milk was a necessary food for a "superior race."⁷⁶ For anyone tempted to dismiss this critique as outdated, consider the fossil-fuel industry's support of carbon-capture technology, which received a big funding boost in the IIJA. As it turns out, carbon capture can be used to increase oil production.⁷⁷ And fossil fuel extraction and combustion carry significant inequitable distributive consequences.⁷⁸

⁷¹ A classic example is apparent on the face of the Clean Water Act. Although the Clean Water Act aims to restore the integrity of the Nation's waters, its central feature is a permit system—NPDES—that sanctions pollution. 33 U.S.C. §§ 1251, 1342. For a critique of similar features of the Clean Air Act, see John P. Dwyer, *The Pathology of Symbolic Legislation*, 17 ECOLOGY L.Q. 233 (1990). Of course, the impacts of these kinds of policy choices have disproportionately burdened poor and Global Majority communities. ROBERT D. BULLARD ET. AL., TOXIC WASTES AND RACE AT TWENTY xiii (2007), <https://www.ucc.org/wp-content/uploads/2021/03/toxic-wastes-and-race-at-twenty-1987-2007.pdf> [https://perma.cc/AK23-TWY6]; LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE MODERN ENVIRONMENTAL JUSTICE MOVEMENT 54–58 (2001).

⁷² See MARX, *supra* note 70, at 215–24 (cataloging exploitative practices in a host of industries). For a look at this issue in the textile industry, see, for example, SOFI THANHAUSER, WORN: A PEOPLE'S HISTORY OF CLOTHING 207–08 (2022).

⁷³ See, e.g., SHALANDA BAKER, REVOLUTIONARY POWER: AN ACTIVIST'S GUIDE TO THE ENERGY TRANSITION 33–35 (2021) (critiquing systemic inequities inherent in traditional utility regulation); Etienne C. Toussaint, *The Spirit of Oligarchy in American Agriculture*, 126 COLUM. L. REV. (forthcoming 2026) (manuscript at 1) (on file with author) (providing a history of Black farmer exploitation's role in rise of agricultural oligarchies and arguing "colorblind constitutionalism perpetuates oligarchic power arrangements that sustain racial capitalism").

⁷⁴ See, e.g., JANE PILLINGER, ROBIN R. RUNGE & CHIDI KING, STOPPING GENDER-BASED VIOLENCE AND HARASSMENT AT WORK: THE CAMPAIGN FOR AN ILO CONVENTION (2022) (documenting global movement for international labor standards to eliminate gender-based violence and harassment at work); Jedediah Britton-Purdy et al., *Building a Law-and-Political Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1792 (2020) ("Attention to political economy today requires attentiveness to the ways in which economic and political power are inextricably intertwined with racialized and gendered inequity and subordination.").

⁷⁵ This includes the 1923 Filled Milk Act that was upheld in the seminal commerce power case *United States v. Carolene Prods. Co.*, 304 U.S. 144, 145–46 (1938).

⁷⁶ See Jessica Eisen, *Milked: Nature, Necessity, and American Law*, 34 BERKELEY J. GENDER, L. & JUST. 71, 83–88 (2019) (providing details of racial rhetoric linked to milk production policy). For more on agriculture generally, see Linda A. Malone, *Reflections on the Jeffersonian Ideal of an Agrarian Democracy and the Emergence of an Agricultural and Environmental Ethic in the 1990 Farm Bill*, 12 STAN. ENV'T L.J. 3, 49 (1993) ("As agriculture has distanced itself from the land—with corporate, absentee, non-organic farm management—the reverence for agriculture in American society has diminished.").

⁷⁷ See Tim De Chant, *The Real Reason Why Oil and Gas Companies are Bullish on Carbon Capture*, TECH CRUNCH (Feb. 21, 2025), <https://techcrunch.com/2025/02/21/the-real-reason-why-oil-and-gas-companies-are-bullish-on-carbon-capture/?guccounter=1> [https://perma.cc/RJ89-SKP8] (elaborating on the process and the IRA's tax incentives).

⁷⁸ For a critique centering such justice concerns, see generally WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL RECOMMENDATIONS: CARBON MANAGEMENT WORKGROUP (Nov. 17, 2023), https://www.epa.gov/system/files/documents/2023-11/final-carbon-management-recommendations-report_11.17.2023_508.pdf [https://perma.cc/N2QL-

Although not so overt as the milk propaganda, the built-in systemic inequities persist.

These critiques also extend into the work of administrative agencies, which is where industrial policy is often carried out in the form of grant-making, loan programs, tax subsidies, and other financial and regulatory incentives.⁷⁹ As Professor Bijal Shah argues, “agencies engage in behavior, the implementation and enforcement of regulatory law, that subordinates the interests of vulnerable and marginalized people to institutional priorities.”⁸⁰ This takes place on a systemic basis; thus, Shah’s lens is not trained on individual discriminatory behaviors as much as the patterns and defaults that accompany agency institution-building.⁸¹ Her normative claim—which I include among the premises underlying this Article—is that “true efficiency” means just (that is, equitable) outcomes, not simply bureaucratic efficiency.⁸² Yet “agencies are motivated to subordinate the well-being of marginalized communities to achieve institutional interests.”⁸³ This can be true despite that institutional priorities claim legitimacy so far as they go.⁸⁴ Thus, despite the efforts of agencies under some administrations to affirmatively chip away at the legacy of systemic inequity,⁸⁵ inertia remains strong.⁸⁶

3D8A] [hereinafter WHEJAC]; *see also id.* at 3–4 (“WHEJAC is surprised at how environmental justice concerns related to safety, public health, environmental risks, cumulative impacts, and efficiency are unaddressed, addressed inefficiently, or addressed haphazardly by the federal government and other proponents of carbon management.”).

⁷⁹ Administrative law is concerned with a variety of such activities. For example, the decision to award a grant is an adjudication, and disappointed applicants have some ability to seek redress in the federal courts. *See* Administrative Procedure Act, 5 U.S.C. §§ 501(6)–(7), 702 (defining order and adjudication and establishing cause of action). Similarly, the guidance documents that agencies use to set their grant-making policies are treated as other guidance documents for purposes of administrative law; this means that they are nonlegislative rules that can be difficult to bring before a court. *Bennett v. Spear*, 520 U.S. 154, 177–78 (2012) (holding an agency action is final if the action marks the “consummation of the agency’s decisionmaking process,” and the action is one “by which rights or obligations have been determined, or from which legal consequences will flow”); *cf. Kapczynski & Michaels, supra* note 12, at 282–83 (arguing that mechanisms of industrial policy fall outside the administrative law paradigm and are often not subject to judicial review).

⁸⁰ Bijal Shah, *Administrative Subordination*, 91 U. CHI. L. REV. 1603, 1612 (2024).

⁸¹ *Id.* at 1612–13.

⁸² *Id.* at 1616–17; *see also* Caroline Cecot, *Efficiency and Equity in Regulation*, 76 VAND. L. REV. 361, 368, 370 (2023) (arguing that understanding the distributional effects of regulations promotes both efficiency and equity).

⁸³ Shah, *supra* note 80, at 1617.

⁸⁴ *Id.* at 1621 (noting “institutional priorities are justifiably important to maintaining a functional administrative state”).

⁸⁵ *See generally* Olatunde C.A. Johnson, *Overreach and Innovation in Equality Regulation*, 66 DUKE L.J. 1771 (2017) (exploring and theorizing new regulatory approaches to civil rights that emerged under the Obama Administration); Bertrall L. Ross II, *Administering Suspect Classes*, 66 DUKE L.J. 1807 (2017) (arguing agencies have legitimate constitutional role in protecting historically marginalized classes of people and critiquing judicial skepticism of such efforts within the Obama Administration).

⁸⁶ Even in administrations that push for enhanced equitable policies, political realities and inertia can combine to produce unjust outcomes, as demonstrated by the Biden Administration’s decision to award Justice40 credit to carbon-capture projects in overburdened

B. Attending to Justice Within Industrial Policy

Still, it is worth considering: could industrial policy really usher in a just transition?⁸⁷ Can it be more than Macy's Business-as-Usual?⁸⁸ It is theoretically possible to attend to some of these values through industrial policy, especially if the statutory authorities and implementation include measures that empower communities in the long term.⁸⁹ Researchers Amy Kapczynski and Joel Michaels argue that contemporary industrial policy should advance broader social objectives rather than simply serve wealth-maximization or international competitiveness.⁹⁰ With that understanding, they offer a variety of administrative-law mechanisms for enhancing the "capacity of structurally disadvantaged groups to exercise collective influence."⁹¹ These include mechanisms familiar to environmental law, like technical assistance grants and state block grants.⁹²

Indeed, the IIJA and IRA as implemented by the Biden Administration espoused many such mechanisms. The IRA, for example, instructed EPA to direct over half of the Greenhouse Gas Reduction Fund—which, among other things, can aid investment in zero-emission resources like rooftop solar—to low-income and disadvantaged communities.⁹³ Money saved on electricity translates to money available for other necessities like healthcare, childcare, food, and transportation.⁹⁴ This in turn contributes to enhanced quality of life and capacity to engage in other civic matters.⁹⁵ Technical assistance grants for environmental and climate initiatives for disadvantaged communities were also part of the IRA's funding authority for EPA.⁹⁶ Many of the eligible types of

communities, over the strong objection of the White House Environmental Justice Advisory Council. WHEJAC, *supra* note 78, at 4.

⁸⁷ Cf. Kapczynski & Michaels, *supra* note 12, at 282–83 ("Without more attention to democratic values, industrial policy risks empowering private firms over both the government and ordinary people and reproducing stratifications of resources and expertise.").

⁸⁸ See *supra* Part II.

⁸⁹ See Nicholas Targ, *A Third Policy Avenue to Address Environmental Justice: Civil Rights and Environmental Quality and the Relevance of Social Capital Policy*, 16 TUL. ENV'T L.J. 167, 169–170 (2002) (detailing indicators of community empowerment that correspond to achieving beneficial environmental justice outcomes); *id.* at 172 (cataloging government-led policy efforts at supporting development of social capital).

⁹⁰ Kapczynski & Michaels, *supra* note 12, at 282–83.

⁹¹ *Id.* at 284.

⁹² *Id.* at 327.

⁹³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 134(a)(1), 136 Stat. 2067 (to be codified at 42 U.S.C. § 7434). For details of sixty awards that EPA made under its Solar for All program, see *Greenhouse Gas Reduction Fund: Solar for All*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all> [https://perma.cc/TKV8-TYTV] (last visited Oct. 2, 2025).

⁹⁴ For an overview of some of the direct impacts of energy insecurity, see Diana Hernández, *Energy Insecurity and Health: America's Hidden Hardship*, HEALTH AFFAIRS (June 29, 2023), <https://www.healthaffairs.org/do/10.1377/hpb20230518.472953/> [https://perma.cc/2WCS-WDGL].

⁹⁵ *Id.*

⁹⁶ See Dotson & Maghamfar, *supra* note 56, at 10022 (listing eligible projects).

projects stood to improve health outcomes and ease barriers to engagement with state and federal public regulatory processes.⁹⁷

It is worth noting that EPA's grants and other agencies' efforts, combined with tax incentives for projects in low-income communities, may have a mutually reinforcing effect overall in building community capacity while attending to climate change risks.⁹⁸ Although I focus here on how DOE's Loan Programs Office (LPO) agency combined industrial climate policy with justice policy, I do not mean to overlook the potential combined effect of many of the IIJA and IRA programs. Focusing on a single program may underestimate the overall climate and justice benefits of this particular industrial policy, while overstating its vulnerability to shifting politics. Still, as a case study, the story of LPO offers a tangible example of many of the themes this Article engages. With these caveats in place, therefore, we can turn to those specifics.

The IIJA and IRA significantly increased the budget (to the tune of over \$350 billion⁹⁹) and authorities of LPO, which was established by Congress through the Energy Policy Act of 2005.¹⁰⁰ In that initial mandate, Congress assigned the LPO authority to administer a Tribal Energy Loan Guarantee Program¹⁰¹ and an innovative Clean Energy Financing Program.¹⁰² The latter, known as the Title 17 Program,¹⁰³ included money specifically designated for nuclear energy, advanced fossil energy, and renewable and efficient energy projects.¹⁰⁴ It was meant to support technically viable technologies that lack access to the capital

⁹⁷ *Id.*

⁹⁸ See, e.g., U.S. INTERNAL REVENUE SERV., CLEAN ELECTRICITY LOW-INCOME COMMUNITIES BONUS AMOUNT PROGRAM (Feb. 11, 2025), <https://www.irs.gov/credits-deductions/clean-electricity-low-income-communities-bonus-credit-amount-program> [https://perma.cc/92ZR-W73H] (collecting guidance and regulatory documents).

⁹⁹ GAO REPORT, *supra* note 56, at 13.

¹⁰⁰ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (codified primarily in scattered sections of 42 U.S.C.); *see also* Inflation Reduction Act of 2022, U.S. DEP'T OF ENERGY (Sep. 22, 2023), <https://www.energy.gov/lpo/inflation-reduction-act-2022> [https://perma.cc/L6T2-9WTP].

¹⁰¹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 2602, 119 Stat. 594 (codified at 25 U.S.C. § 3502).

¹⁰² *Id.* at §§ 1701–1702 (codified at 42 U.S.C. §§ 16511–16512); *id.* § 1703–1704, 42 U.S.C. 16513–16514; *see also* Title 17 Energy Financing, U.S. DEP'T OF ENERGY, <https://www.energy.gov/lpo/title-17-energy-financing> [https://perma.cc/8BJ9-2GK9] (last visited Oct. 2, 2025) (describing the Title 17 Energy Financing Program).

¹⁰³ For a full list of eligible projects, see DOE's implementing regulations at 10 C.F.R. § 609.3 (2025). It is important to note that there is considerable disagreement as to whether some of these technologies are "clean," and whether they impose significant environmental justice impacts. For example, innovative energy products may include advanced nuclear, critical minerals supply, advanced fossil energy technology, and oil refineries in addition to renewable energy systems and pollution control equipment. *Title 17 Clean Energy Financing*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/lpo/title-17-clean-energy-financing> [https://perma.cc/8BJ9-2GK9] (last visited Oct. 2, 2025).

¹⁰⁴ *Loan Programs Office*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/lpo/loan-programs-office> [https://perma.cc/M7EK-DB8P] (last visited Oct. 2, 2025).

needed to become commercially viable.¹⁰⁵ For example, early loan guarantees supported the first new nuclear reactor construction in the United States in decades.¹⁰⁶ LPO also lent \$465 million to Tesla in 2014.¹⁰⁷

The IIJA and IRA added important new Title 17 categories, among them authorizations for reinvestment in energy infrastructure like repurposing facilities previously used for fossil-fueled power generation.¹⁰⁸ All project applicants were required by statute to comply with the National Environmental Policy Act (NEPA), the Davis-Bacon Act's prevailing wage requirements, and the IIJA's Build America, Buy America Act, which established procurement preferences for domestic materials like iron and steel.¹⁰⁹ In addition, Congress required that most Title 17 energy projects must "avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases."¹¹⁰ Notably, this portion of the statute did not attend to disadvantaged communities or make other explicit community-based policy. However, several of the Title 17 projects could qualify for tax credits if they were located in low-income communities.¹¹¹

DOE declined to establish any justice-oriented policy in its 2023 implementing regulations, which focused on details such as updating the lists of eligible projects and making other amendments to conform with the new IIJA and IRA authorities.¹¹² Instead, it favored including this policy in its guidance. The agency removed previously codified project-specific application requirements in favor of a general application approach supplemented through agency guidance.¹¹³ And the resulting guidance document included the requirement that Title 17 applicants must submit Community Benefits Plans (CBPs) to increase the likelihood that projects will: "(1) support meaningful community and labor engagement; (2) invest in America's workforce; (3) advance diversity,

¹⁰⁵ Nico Portuondo, *Republicans Mull Fate of DOE Loan Program*, E&E DAILY (Dec. 3, 2024, at 06:48 AM EST), <https://www.eenews.net/articles/republicans-mull-fate-of-doe-loan-program-2/> [https://perma.cc/8BJ9-2GK9] (referencing "emerging energy technologies that have difficulty attracting private capital").

¹⁰⁶ These supported two new reactors at the Vogtle site in Georgia (operated by vertically integrated utility Southern Company), which received guarantees in 2009 and began commercial operation in 2023 and 2024. EISEN ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT 447–49 (6th ed. 2023).

¹⁰⁷ Portuondo, *supra* note 105.

¹⁰⁸ 42 U.S.C. § 16517.

¹⁰⁹ See U.S. DEP'T OF ENERGY, PROGRAM GUIDANCE FOR TITLE 17 CLEAN ENERGY FINANCING PROGRAM 47–9 (May 19, 2023) (summarizing the statutory requirements).

¹¹⁰ 42 U.S.C. § 16513(a)(1). Other categories may not have this requirement. For energy infrastructure reinvestment in closed (rather than operating) facilities, for example, this requirement does not apply. 42 U.S.C. § 16517(a).

¹¹¹ See, e.g., Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13103, 136 Stat. 1921 (providing for an "increase in energy credit for solar and wind facilities placed in service in connection with low-income communities").

¹¹² Loan Guarantees for Clean Energy Projects, 88 Fed. Reg. 34419 (May 30, 2023) (to be codified at 10 C.F.R. pt. 609).

¹¹³ Loan Guarantees for Clean Energy Projects, 88 Fed. Reg. at 34421–22.

equity, inclusion, and accessibility; and (4) contribute to the President’s goal that 40% of the overall benefits of clean energy investment flow to disadvantaged communities (the Justice40 Initiative).¹¹⁴ DOE explained that these attributes were “among the factors that indicate the prospect of loan repayment.”¹¹⁵ For example, if a community supports a project and local workforces are used, a project is more likely to be completed.¹¹⁶

Much of this policy can be attributed to the visionary leadership of now-Provost Shalanda Baker, who saw the potential for these initiatives to transform communities beyond any single project.¹¹⁷ Speaking again just to LPO’s work, as of early January 2025, it had closed on twenty-five loans and announced conditional commitments for scores more. Of the few CBPs that were available online, all announced the project developers’ commitments to diversity, equity, and inclusion policies and community engagement. Money already out the door and in communities stands to have important ripple effects, despite the 180-degree policy swing ushered in by the Trump Administration.¹¹⁸

For one thing, investments in major energy infrastructure tend to be sticky. Of course, this phenomenon is part of why we face such profound climate risks today. For example, old coal-fired power plants that were grandfathered into the Clean Air Act have continued to fight at every turn to avoid stricter air pollution control measures, staying in operation much longer than Congress likely expected.¹¹⁹ The phenomenon is also evident in traditionally regulated utilities’ insistence on cost recovery for stranded assets after regulatory changes; there is an expectation that once built, energy assets will be permitted to continue to operate.¹²⁰ This

¹¹⁴ *Id.* at 34444.

¹¹⁵ *Id.*

¹¹⁶ *Id.*; see, e.g., *How LPO Can Support All Stages of the Critical Minerals Supply Chain*, LPO (Apr. 30, 2024), <https://www.energy.gov/lpo/articles/how-lpo-can-support-all-stages-critical-minerals-supply-chain> [https://perma.cc/9C3S-ZT7H] (explaining that applicants must have the support of their communities and “include strong Community Benefits Plans” that attend to labor, DEI, and Justice40 priorities) (on file with author).

¹¹⁷ See Shalanda Baker, *The Future of Environmental and Energy Justice*, RESOURCES (Nov. 13, 2024), <https://www.resources.org/common-resources/the-future-of-environmental-and-energy-justice/> [https://perma.cc/NK3Q-L649] (presenting interview that illuminates Baker’s contributions and perspectives). For more on the relationship between community vetoes and community benefits agreements, see generally Emily Hammond, *The Community Veto and the Clean Energy Transition*, 85 OHIO ST. L.J. 1031, 1048 (2025) (detailing Community Benefit Plans).

¹¹⁸ Independent monitoring will be necessary to evaluate this potential. The Trump Administration is not monitoring the equity commitments in LPO contracts and is even working to remove those commitments. E.g., Maeve Allsup, *As DOE Reviews \$15 Billion in Awards, LPO May Again Be on the Chopping Block*, LATITUDE MEDIA (May 20, 2025), <https://www.latitudemedia.com/news/as-doe-reviews-15-billion-in-awards-lpo-may-again-be-on-the-chopping-block/> [https://perma.cc/3UBG-KWEU].

¹¹⁹ See EISEN ET AL., *supra* note 106, at 284–86.

¹²⁰ See, e.g., Emily Hammond & Jim Rossi, *Stranded Costs and Grid Decarbonization*, 82 BROOK. L. REV. 645 (2017) (offering further explanation and contending that stranded cost recovery for traditional energy resources must be reformed to support decarbonization); Eric Biber, *Cultivating a Green Political Landscape: Lessons for Climate Change Policy from the*

has been the story of Business-as-Usual reflected in law and policy's preference for incumbents.

But with enough climate-friendly infrastructure in place, one wonders, could the balance of stickiness shift? Legal preferences for investment-backed expectations can favor renewable projects just as easily as fossil-fueled projects;¹²¹ moreover, new investments build a different political economy.¹²² Indeed, reports abound that congressional Republicans whose districts have benefited from IIJA and IRA investments may be reluctant to roll back investments in their districts.¹²³ And disadvantaged communities receiving technical assistance funding and other capacity-building support through such programs stand poised to exercise a greater voice going forward.¹²⁴ These possibilities deserve close attention in the coming years, but in the present moment, we are seeing the second Trump Administration's holistic effort to dismantle progress on both climate and justice.

III. THE GREAT UNRAVELING

As is evident from the discussion above, despite its lean toward a more just, climate-friendly future, recent green industrial policy had several features that operate as part of the Business-as-Usual story.¹²⁵

Defeat of California's Proposition 23, 66 VAND. L. REV. 399, 402 (2013) (focusing on creating a renewables industry that resists future policy rollbacks).

¹²¹ Eric Biber, Nina Kelsey & Jonas Meckling, *The Political Economy of Decarbonization: A Research Agenda*, 82 BROOK. L. REV. 605, 618 (2017) ("[T]argeted green industrial policies can provide substantial incentives to make concrete capital investments in renewable energy").

¹²² *Id.* at 609 ("We should be asking what kinds of tools society can use now that are most likely to make *future* efforts to advance decarbonization more feasible politically"); *see also* Zachary Liscow & Quentin Karpilow, *Innovation Snowballing and Climate Law*, 95 WASH. U. L. REV. 387, 389 (2017) (drawing from new economics research to argue that the legal system should adopt policy levers to encourage "innovation snowballing," which creates path dependencies).

¹²³ *See, e.g.*, Daniel Moore, *Key Republican Pushes Back on IRA and Offshore Wind*, AXIOS PRO (Aug. 7, 2025), <https://wwwaxios.com/pro/energy-policy/2025/08/07/key-republican-pushes-back-on-ira-and-offshore-wind> [https://perma.cc/W7UE-JJD6] (collecting examples); *see also* Farber, *supra* note 4, at 324–25 (describing studies indicating Republican districts have benefitted most from IRA funding).

¹²⁴ This premise underlies the creation of the Thriving Communities Technical Assistance Centers Program, a joint initiative of EPA and DOE toward the end of the Biden Administration, that brings traditional technical assistance together with other capacity-building supports like training on meeting facilitation and community engagement. *See The Thriving Communities Technical Assistance Centers Program*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/inflation-reduction-act/thriving-communities-technical-assistance-centers-program#Overview%20of%20the%20EJ%20TCTACs> [https://perma.cc/3NQM-TXL3] (last visited Oct. 2, 2025).

¹²⁵ Some opponents of Project 2025 framed their concerns in economic terms, representing it as a threat to a "thriving energy economy" that would undermine how "American industrial innovation has unleashed a domestic manufacturing renaissance." Devon Lespier & Jessica Ordóñez-Lancet, *How Project 2025 Threatens the Inflation Reduction Act's Thriving Clean Energy Economy*, CTR. FOR AM. PROGRESS (Aug. 15, 2024), <https://>

Still, the innovations flowing from the IRA and IIJA offered an important first step.¹²⁶ Had the 2024 presidential election gone differently, we might have had the opportunity to examine the ability of this industrial policy to shift the arc of climate change and justice, even incrementally. This might have been possible even with major changes in the courts that seek to limit agency power and insist on formalism at every turn. The challenge, of course, is that that changed in early 2025. This Part provides an overview of these developments and points to how they fit within Macy's story of the Great Unraveling.

A caveat: Macy's frame of the Great Unraveling provides a perspective beyond any single presidential administration. Instead, it is part of a much longer period marked by increasing oppression, worsening climate and environmental conditions, and the rise of authoritarian states.¹²⁷ Although I present of-the-moment changes in presidential policy and rule-of-law norms below, I offer these developments as symptoms rather than isolated disease. So conceived, we can broaden the scope of responses to include system-changing creativity, as suggested in Part IV.

A. Presidential Policy and Congressional Support

Even before President Trump's second term began, Project 2025 set forth plenty of details about what to expect.¹²⁸ For example, it called for eliminating several key DOE offices, including the Office of Clean Energy Demonstrations (OCED), the Office of State and Community Energy Programs (OSCEP), and the LPO.¹²⁹ It also called for a stop to "using energy policy to advance politicized social agendas" like "energy justice," Justice40, and DEI¹³⁰ and insisted on doing away with Project Labor Agreements.¹³¹ Moreover, in early January 2025 these priorities seemed

www.americanprogress.org/article/how-project-2025-threatens-the-inflation-reduction-acts-thriving-clean-energy-economy/ [<https://perma.cc/RFT7-GNS8>].

¹²⁶ See generally Biber, Kelsey & Meckling, *supra* note 121 (examining how initial policy changes might pave the way for bigger shifts later).

¹²⁷ *Three Stories of Our Times*, *supra* note 21.

¹²⁸ See Lespier & Ordóñez-Lancet, *supra* note 125 (summarizing how some opponents of Project 2025 framed their concerns in economic terms, representing it as a threat to a "[t]hriving [c]lean [e]nergy [e]conomy" that would undermine how "American industrial innovation has unleashed a domestic manufacturing renaissance").

¹²⁹ Bernard L. McNamee, *Department of Energy & Related Commissions*, in MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE: PROJECT 2025 363, 368–69 (Paul Dans & Steven Groves eds., 2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [<https://perma.cc/3LFB-RMN3>].

¹³⁰ *Id.* at 370 (footnotes omitted).

¹³¹ Jonathan Berry, *Department of Labor & Related Agencies*, in MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE: PROJECT 2025 581, 581, 604 (Paul Dans & Steven Groves eds., 2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [<https://perma.cc/3LFB-RMN3>].

to have many backers in Congress, notwithstanding the potential for stickiness noted above.¹³²

Beginning on his first day in office, Trump began implementing the Project 2025 agenda and embarking on a project of dismantling the federal government.¹³³ This includes threats to various institutions of civil society like the media,¹³⁴ universities,¹³⁵ the American Bar Association,¹³⁶ and law firms representing challengers to the administration.¹³⁷ It also includes blatantly unconstitutional executive orders¹³⁸ and activities taken in violation of clear procedural due process

¹³² See generally Riki Fujii-Rajani & Sanjay Patnaik, *What Will Happen to the Inflation Reduction Act Under a Republican Trifecta*, BROOKINGS (Jan. 6, 2025), <https://www.brookings.edu/articles/what-will-happen-to-the-inflation-reduction-act-under-a-republican-trifecta/> [<https://perma.cc/MW3S-RRHP>] (describing that Republican lawmakers have called for IRA rollbacks while detailing countervailing considerations). In July 2025, Congress passed and President Trump signed into law a budget reconciliation bill that rolled back many of the IRA's provisions, including phasing out clean-energy tax credits and eliminating incentives that could bring energy resilience and lower costs to lower-income and historically marginalized communities. See, e.g., Alison Coffey, Lima Hossain & Kelly Sheehan, *What Does the Big "Ugly" Bill Act Mean for Energy Justice? Five Things to Know*, INITIATIVE FOR ENERGY JUST. (July 30, 2025), <https://iejusa.org/what-does-the-big-ugly-bill-act-mean-for-energy-justice/> [<https://perma.cc/ZDU6-3694>] (describing the interrelationship among various cuts and demonstrating their connections to justice outcomes).

¹³³ See Serapia Kim et al., *Unmasking DOGE*, CTR. FOR PROGRESSIVE REFORM (May 24, 2025), https://docs.google.com/spreadsheets/d/1mDYPk9Kh_BG76iuqU1X4tzSZOOiMJnExj6pstL4TSM/edit?gid=0#gid=0 [<https://perma.cc/MWE5-THFC>] (last visited Oct. 2, 2025) (tracking the "Department of Government Efficiency" activities).

¹³⁴ For example, the Trump Administration banned the Associated Press from the White House press pool after the new outlet refused to follow the Administration's purported renaming of the Gulf of Mexico to the "Gulf of America." Kyle Cheney, *Trump Personally Decided to Limit Associated Press's Access to White House*, POLITICO (Feb. 24, 2025), <https://www.politico.com/news/2025/02/24/trump-white-house-associated-press-lawsuit-00205723> [<https://perma.cc/MWE5-THFC>].

¹³⁵ See Pres. & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., No. 25-cv-10910-ADB, 2025 WL 2528380 (D. Mass. Sep. 3, 2025) (granting partial summary judgment for plaintiffs and holding, among other things, that the Trump Administration violated the First Amendment by engaging in viewpoint discrimination in terminating funding to Harvard University); see also Danielle Kurtzleben & Elissa Nadworny, *President Trump's War on Higher Education*, ALL THINGS CONSIDERED (May 30, 2025), <https://www.npr.org/2025/05/30/nx-s1-5415678/president-trumps-war-on-higher-education> [<https://perma.cc/ULL2-BCNR>] (comparing administration's approach to McCarthyism).

¹³⁶ See, e.g., Josh Moody, *ABA Suspends DEI Standards for Accreditation*, INSIDE HIGHER ED (Feb. 22, 2025), <https://www.insidehighered.com/news/quick-takes/2025/02/22/aba-suspends-dei-standards-accreditation> [<https://perma.cc/Q8TS-GJP9>] (describing Trump Administration's efforts to discredit the ABA).

¹³⁷ See, e.g., *Brief of Amici Curiae* at 3–4, 775 Law Professors in Support of Pl.'s Mot. for Summary J. & Decl. & Perm. Inj. Relief, Susman Godfrey LLP v. Exec. Off. of the President, No. 1:25-cv-01107-LLA (D.D.C. filed Apr. 23, 2025) (arguing Executive Order targeting law firm violates the First, Fifth, and Sixth Amendments and threatens the rule of law).

¹³⁸ See Daniel Catchpole & Nate Raymond, *US Judge Temporarily Blocks Trump's Order Restricting Birthright Citizenship*, REUTERS (Jan. 23, 2025), <https://www.reuters.com/world/us/us-judge-hear-states-bid-block-trump-birthright-citizenship-order-2025-01-23/> [<https://perma.cc/7ZM2-GHKE>] (quoting judge as calling the Executive Order "blatantly unconstitutional").

rights¹³⁹ and even in violation of court orders.¹⁴⁰ For those who value the rule of law and the expectation that presidents act in good faith to defend the Constitution, these activities are of deep concern regardless of policy preferences. They represent a turn toward authoritarianism that is in line with the global decline of democracies.¹⁴¹

Add to this the whole-of-government project aimed at eliminating climate-protective and justice policies. While this approach is not sector-specific, for purposes of this Article, retaining the focus on the LPO is instructive. First, Trump's executive order titled *Unleashing American Energy* expressly directed DOE to halt climate- and justice-oriented funding under the IIJA and IRA.¹⁴² If that weren't enough, in a second executive order Trump also instructed agencies to terminate all environmental justice-oriented positions in the federal government.¹⁴³ Soon after, staff at DOE's Office of Energy Justice and Equity were put on leave,¹⁴⁴ and the agency developed a "hit list" of renewable-energy projects to consider for cancellation.¹⁴⁵ These and subsequent actions prompted a host of inquiries about DOE's ability to honor existing

¹³⁹ See *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *2 (4th Cir. Apr. 17, 2025) ("The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order.").

¹⁴⁰ Alan Feuer, 'Nothing Has Been Done': Judge Rebukes U.S. Effort to Return Wrongly Deported Man, N.Y. TIMES (Apr. 15, 2025), <https://www.nytimes.com/2025/04/15/us/trump-abrego-garcia-deported-hearing.html> [https://perma.cc/6F29-ZU8G] (describing "the latest test of the White House's willingness to defy court orders and potentially shatter the traditional, but increasingly fragile, balance of power between the executive and judicial branches.").

¹⁴¹ See generally INT'L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, THE GLOBAL STATE OF DEMOCRACY 2024: STRENGTHENING THE LEGITIMACY OF ELECTIONS IN A TIME OF RADICAL UNCERTAINTY (Sep. 17, 2024), <https://www.idea.int/publications/catalogue/global-state-democracy-2024-strengthening-legitimacy-elections?lang=en> [https://perma.cc/2FEC-T3LY] (reporting global declines across a host of indicators); Jan M. Olsen, *Democracy Declined for 8th Straight Year Around the Globe, Institute Finds*, ASSOCIATED PRESS (Sep. 16, 2024), <https://apnews.com/article/democracy-voters-turnout-elections-interference-disinformation-ai-b792e49cf037624a5e88dc82cac4c899> [https://perma.cc/KG66-R9VD] (reporting on the global increase in contesting election results).

¹⁴² Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8354–8357 (Jan. 20, 2025).

¹⁴³ *Id.* EPA has been hard-hit. See Press Release, EPA, EPA Terminates Biden's Environmental Justice, DEI Arms of Agency (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-terminates-bidens-environmental-justice-dei-arms-agency> [https://perma.cc/KG66-R9VD]; Lisa Friedman, *EPA Plans to Close All Environmental Justice Offices*, N.Y. TIMES (Mar. 11, 2025), <https://www.nytimes.com/2025/03/11/climate/epa-closure-environmental-justice-offices.html> [https://perma.cc/DP2P-8AQP].

¹⁴⁴ Annie Snider, *DOE Energy Justice Staffers Put on Leave under Trump's DEI Order*, POLITICO PRO (Jan. 23, 2025), <https://subscriber.politicopro.com/article/2025/01/doe-energy-justice-staffers-put-on-leave-under-trumps-dei-order-00200331> [https://perma.cc/A7KG-BNMH].

¹⁴⁵ Emily Atkin, *Secret Energy Department "Hit List" Targets Renewable Energy Industry*, HEATED (Mar. 27, 2025), <https://heated.world/p/secret-energy-department-hit-list> [https://perma.cc/ZZ6U-LBKS] (reporting on agency's efforts to cancel projects that have already been funded).

obligations (these are enforceable contracts)¹⁴⁶ and follow through on conditional commitments.¹⁴⁷

What is happening at DOE reveals how quickly justice commitments can be unraveled. Part of the strategy involves rapidly dismantling the civil service.¹⁴⁸ This approach has been coupled with targeted reductions, such as placing justice-oriented staff on leave and shutting down related websites.¹⁴⁹ It also includes internal directives to suspend CBP and Justice40 requirements and require funding recipients to halt the expenditure of federal funds for such activities.¹⁵⁰ And it digs into even

¹⁴⁶ Maeve Allsup, *In Trump's First Week, The Fate of LPO Remains Biggest Question Mark*, LATITUDE MEDIA (Jan. 24, 2025), <https://www.latitudemedia.com/news/in-trumps-first-week-the-fate-of-lpo-remains-the-biggest-question-mark/> [https://perma.cc/K7HG-49FE]; Dan Keating et al., *Here's Who's Losing Out as Trump Freezes the Inflation Reduction Act*, WASH. POST (Feb. 8, 2025), <https://www.washingtonpost.com/climate-environment/2025/02/08/trump-climate-federal-funding-freeze/> [https://perma.cc/ CUH3-WXBR].

¹⁴⁷ As noted earlier, the Biden Administration issued new regulations on the LPO process; the preamble provided that conditional commitments could no longer be terminated for any reason. *Loan Guarantees for Clean Energy Projects*, 88 Fed. Reg. 34428 (codified at 10 C.F.R. pt. 609). In the CFR, DOE specifies that it will obligate the “credit subsidy cost” of a loan guarantee at the time of Conditional Commitment, rather than its current practice of obligating credit subsidy cost at financial close of the Loan Guarantee Agreement. 10 C.F.R. § 609(b)(11). Under the prior version of part 609, the Secretary was authorized to terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement. *Loan Guarantees for Clean Energy Projects*, 88 Fed. Reg. at 34422. But on February 20, 2025, DOE posted on Instagram that it had canceled “more than \$124 million in wasteful spending.” Image posted by the U.S. Department of Energy (@energy), INSTAGRAM, *We're just getting started.* (Feb. 20, 2025), <https://www.instagram.com/p/DGTzrcBy2c2/?locale=kk-KZ&hl=en> [https://perma.cc/C74Q-NBF4] (on file with Environmental Law and author).

¹⁴⁸ E.g., Emily Davies, *White House Incentivizes Federal Workers To Resign*, WASH. POST (Jan. 28, 2025), <https://www.washingtonpost.com/politics/2025/01/28/trump-emails-workforce/> [https://perma.cc/SY9J-U6ZS] (reporting on the so-called “Fork in the Road” OMB email blast encouraging civil servants to resign); Emily Davies, *Trump Administration Fires Thousands for ‘Performance’ Without Evidence, in Messy Rush*, WASH. POST (Feb. 17, 2025), <https://www.washingtonpost.com/nation/2025/02/17/trump-fires-federal-workers-performance/> [https://perma.cc/Y4QU-C76Z] (reporting on targeting of probationary employees); Ivana Saric, *What to Know About Trump’s Efforts to Replace Federal Workers Under Schedule F*, AXIOS (Apr. 18, 2025), <https://wwwaxios.com/2025/04/18/schedule-f-trump-federal-workers> [https://perma.cc/6GBX-QWXL] (reporting on plan to reclassify many civil service employees to political appointees terminatable at will). The civil service tempers political shifts and influence in the administrative state. See Michael A. Livermore & Daniel Richardson, *Administrative Law in an Era of Partisan Volatility*, 69 EMORY L.J. 1, 23–24 (2019) (describing how the civil-service system uprooted the old patronage system and offered political insulation to federal workers).

¹⁴⁹ Snider, *supra* note 144.

¹⁵⁰ Memorandum for All Funding Agreements or Awards from Sara Wilson, U.S. Dep’t of Energy (Jan. 27, 2025), <https://www.cogr.edu/sites/default/files/CBP%20and%20DEI%20Notification%20to%20existing%20recipients%20-201.27.2025.pdf> [https://perma.cc/7TU9-GMA3] (directing grant recipients to halt all use of funding for DEI and CBP activities and announcing upcoming modifications to contracts); Evelyn Mayo, *Initiative for Energy Justice, Policy Reversal: How Executive Orders Are Attempting to Reshape DOE’s Community Benefit Plans*, INITIATIVE FOR ENERGY JUST. (Feb. 19, 2025), <https://iejusa.org/policy-reversal-how-executive-orders-are-attempting-to->

smaller details about how the agency gets work done; for example, DOE ended its contract with an important contractor that supports the appliance efficiency standards program, which saves on both greenhouse gas emissions and customers' energy bills.¹⁵¹

If Congress were not majority-Republican, one might expect some checks on this slash-and-burn approach. But Congress has already excised many of the parts of these statutes that they deem objectionable,¹⁵² despite that the Biden Administration's implementation of these provisions has created considerable reliance interests, especially in red states.¹⁵³ Further, even in ordinary times, there is considerable discretion for agencies to shift their policy priorities in ways that either avoid judicial review or are not subjected to particular judicial scrutiny. Guidance documents, which do not require notice-and-comment, can simply be replaced by new administrations without further procedural requirements.¹⁵⁴ Even for Title 17 grantees with contractual provisions that include project sponsors' commitments to CBPs, we can expect that the Trump Administration will not enforce those loan terms, will attempt to renegotiate them, and will eliminate this requirement from future loan agreements.¹⁵⁵

B. Agencies and the Courts

At least since the 1980s, administrative law has self-consciously reflected the reality that changing presidential policies can be expected to result in changing regulatory protections.¹⁵⁶ Still, the challenge of

reshape-does-community-benefit-plans/ [<https://perma.cc/56LA-957L>] (providing additional internal documentation).

¹⁵¹ Peter Elkind, *Beyond Showerheads: Trump's Attempts to Kill Appliance Regulations Cause Chaos*, PROPUBLICA (Apr. 11, 2025), <https://www.propublica.org/article/trump-showersheads-appliances-led-lights-regulation-energy-department-chaos> [<https://perma.cc/RB9Q-2FM3>].

¹⁵² See generally sources cited *supra* note 132 (describing Republican plans and July 2025 reconciliation legislation that rolled back major IRA provisions—phasing out clean-energy tax credits and eliminating equity-focused incentives—showing Congress has already cut provisions it deems objectionable).

¹⁵³ Emily Pontecorvo & Jael Holzman, *The IRA Has a Math Problem*, HEATMAP (Mar. 24, 2025), <https://tinyurl.com/2ja6ue4h> [<https://perma.cc/6H9C-PA7K>] (noting a letter from eighteen House Republicans warning against “prematurely repealing energy tax credits” and that, with big budget cuts on the agenda, some commentators have predicted that even IRA measures with bipartisan support may be cut).

¹⁵⁴ *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 100–01 (2015).

¹⁵⁵ Memorandum from Sara Wilson, *supra* note 150. It remains to be seen whether the project proponents will nevertheless find CBPs a useful tool as a business matter, for gaining and maintaining community acceptance of these new projects. Cf. Hammond, *supra* note 117 (describing practical reasons for working with communities).

¹⁵⁶ Compare *Chevron*, 467 U.S. 837, 865 (1984) (assigning full deference to agencies in the interpretation of statutes they were authorized to administer), with *Skidmore*, 323 U.S. 134, 140 (1944) (exemplifying the assignment of power to the judiciary to determine if administrative agencies had made “reasonable” decisions). See generally *Myers v. United States*, 272 U.S. 52, 176 (1926) (interpreting the Constitution to mean that the President alone has the power to remove executive officers).

regulatory uncertainty in administrative law has vexed the Supreme Court sufficiently that this too has been a rationale for cabining administrative discretion.¹⁵⁷ These decisions are explicitly premised on a judicial yearning for Congress to speak clearly.¹⁵⁸ Consider, for example, that the Rhode Island District Court applied the MQD as one ground on which to enjoin the Trump Administration's sweeping funding freeze.¹⁵⁹ As the court explained, "there is no clear statutory hook for this broad assertion of power."¹⁶⁰ As noted earlier, it seems possible that the IIJA and IRA may in fact have offered more durability on this basis.¹⁶¹

But even if the Court's anti-administrativist project may put some brakes on the Trump Administration's more sweeping efforts, the fact remains that (a) the Court has undone progressive policies that might have achieved more progress in both climate and justice matters;¹⁶² (b) its increased emphasis on the unitary executive is poised to support more rapid dismantling of moderating forces like the civil service;¹⁶³ and (c) ordinary administrative law is "neutral" to these developments, in the sense that it simply follows systemic norms and political preferences.¹⁶⁴

¹⁵⁷ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 373, 411 (2024) (critiquing how the *Chevron* doctrine has enabled agencies to change their interpretations, leaving "an eternal fog of uncertainty").

¹⁵⁸ See also *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (explaining that an agency must point to "clear congressional authorization" for the power it claims).

¹⁵⁹ *Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.*, 778 F. Supp. 3d 440, 471–73 (D.R.I. 2025).

¹⁶⁰ *Id.* at 473.

¹⁶¹ *Gundy v. United States*, 588 U.S. 128, 152–57 (2019) (Gorsuch, J., dissenting) (offering a strong view of the nondelegation doctrine grounded in the concept that Congress cannot divest itself of its legislative powers due to the importance of protecting liberty and deliberation).

¹⁶² *West Virginia v. EPA*, 597 U.S. at 734–35; *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1275, 1294–95 (M.D. Fla. 2021) (rejecting, on equal protection grounds, USDA's race-conscious debt relief initiative pursuant to the American Rescue Plan of 2021's mandate to offer debt relief to "socially disadvantaged farmers and ranchers"); *Holman v. Vilsack*, No. 21-1085-STA-JAY, 2021 WL 2877915, at *14 (W.D. Tenn. July 8, 2021) (rejecting on similar grounds and issuing a preliminary injunction); *Faust v. Vilsack*, 519 F. Supp. 3d 470, 470 (E.D. Wis. 2021) (rejecting on similar grounds and issuing a temporary restraining order).

¹⁶³ See, e.g., *United States v. Arthrex, Inc.*, 594 U.S. 1, 27 (2021) (concluding that "[t]he Constitution therefore forbids the enforcement of statutory restrictions on the [Patent Trial and Appeal Board] Director that insulate the decisions of [Administrative Patent Judges] from his direction and supervision" because "the exercise of executive power by inferior officers must at some level be subject to the direction and supervision of an officer nominated by the President and confirmed by the Senate"); see also *Trump v. United States*, 603 U.S. 593, 607 (2024) ("[T]he courts have 'no power to control the President's discretion' when he acts pursuant to the powers invested exclusively in him by the Constitution.") (internal brackets omitted) (quoting *Marbury v. Madison*, 5 U.S. 137, 166 (1803)).

¹⁶⁴ I use scare quotes for the word "neutral" because the status quo and systemic design are not in fact neutral. See generally Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 (2011) (providing history of CRT and emphasizing its relevance to "colorblind" and post-racial agendas); see generally Shah, *supra* note 80 (contending administrative law's focus on efficiency leads to systemic marginalization).

IV. THE GREAT TURNING: ROLES FOR LAWYERS

If the Great Unraveling is represented by the increasing urgency of climate change, unjust outcomes, and disarray in the federal government,¹⁶⁵ the Great Turning invites us to *transform*—to imagine and manifest a different vision.¹⁶⁶ Calls for such a transformation are everywhere, including in the legal literature.¹⁶⁷ Macy anticipated a host of roles and activities that contribute to these efforts, many of which offer pathways for lawyers. Framed as three dimensions, these are:

Holding Actions. This work includes efforts to block harm, thereby buying time.¹⁶⁸ For example, direct action like living in a tree to prevent destructive logging or locking oneself to excavation equipment¹⁶⁹ can slow destruction, prompt negotiations, and save lives. Macy includes in this category many activities common for lawyers, like participating in rulemakings, the legislative process, monitoring and enforcement, and individual lawsuits.¹⁷⁰ It also includes protests and contributing to support for marginalized groups.¹⁷¹

Structural Change. This is the work of creating new systems to replace those of the industrial growth society.¹⁷² Macy includes in this list still more actions familiar to lawyers and in which many of us are

¹⁶⁵ Under Macy's framing, the Great Unraveling has been taking place for centuries and is traced to land theft, human enslavement, colonialism, and extraction, among other things. *See* MACY, *supra* note 20, at 22 ("The desire to possess or destroy becomes easily projected onto the Earth, the female, dark emotions, and dark-skinned people."). With this understanding, these issues I have identified can be seen as indicators rather than the whole of unraveling.

¹⁶⁶ *See, e.g.*, William D. Ruckelshaus, *Toward a Sustainable World: What Policies Can Lead to the Changes in Behavior—of Individuals, Industries and Governments—That Will Allow Development and Growth to Take Place Within the Limits Set by Ecological Imperatives?*, SCI. AM., Sept. 1989, at 166, 167 ("If we actually do it, the undertaking will be absolutely unique in man's stay on earth."); *see also* William D. Ruckelshaus, Earth Day Address at The Ohio State University: From Awareness to Action (Apr. 22, 1971) (discussing action envisioned to mitigate climate change impacts).

¹⁶⁷ *E.g.*, Shelley Welton, *The Bounds of Energy Law*, 62 B.C. L. REV. 2339, 2343 (2020) (noting that instead of seeing "climate change as a technocratic problem that can be solved within existing legal frameworks and institutions," youth activists insist that it be "framed as a part of a larger agenda of economic and racial justice.").

¹⁶⁸ Macy, *supra* note 18, at 143–44.

¹⁶⁹ *E.g.*, Elana Klein, *A Woman Lived Up a 180-Foot, 1,000-Year-Old Tree for 2 Years to Save a Forest From Loggers. Meet Julia 'Butterfly' Hill*, YAHOO! NEWS (Apr. 22, 2025), <https://www.yahoo.com/news/woman-lived-180-foot-1-131602070.html> [https://perma.cc/XR8P-FBFW]. For further examples, see Emily Hammond, *Toward a Role for Protest in Environmental Law*, 70 CASE W. RSRV. L. REV. 1039, 1041–42 (2020).

¹⁷⁰ Macy, *supra* note 18, at 143.

¹⁷¹ *Id.*

¹⁷² *See* JOYCE M. BARRY, STANDING OUR GROUND: WOMEN, ENVIRONMENTAL JUSTICE, AND THE FIGHT TO END MOUNTAINTOP REMOVAL 141 (2012) ("Environmental justice theory and activism firmly situated in particular places while making global connections is perhaps the most productive way of understanding and confronting environmental justices wrought by neoliberal forces.")

engaged: transitioning to renewable energy,¹⁷³ creating new ways to manage land such as conservation easements, and creating new indices that reflect values rooted in deep sustainability.¹⁷⁴ It might also include broadly-aimed participation in regulatory activities or lawsuits—consider, for example, the way an EPA petition to regulate greenhouse gas emissions from new motor vehicles precipitated the United States' primary regulatory means for addressing climate change.¹⁷⁵

Another example is the nearly-ten-year-effort of Our Children's Trust in *Juliana v. United States*,¹⁷⁶ in which youth plaintiffs sought to hold the federal government accountable for its fossil fuel policies, which the plaintiffs alleged violated their constitutional rights to life, liberty, and property.¹⁷⁷ The Obama, Trump, and Biden Administrations all fought against the suit, and ultimately, the Supreme Court declined to review the *Juliana* plaintiffs' Ninth Circuit dismissal over standing.¹⁷⁸ Still, these plaintiffs' efforts inspired other youth plaintiffs to keep pressing forward.¹⁷⁹

And there have been successes in state courts. These include winning at trial and on appeal in *Held v. Montana*.¹⁸⁰ In its opinion upholding the plaintiffs' win, the Supreme Court of Montana recounted the "undisputed

¹⁷³ Consider the community solar example of Lincoln Park Solar Garden. *Lincoln Park Solar Garden*, ECO3, <https://www.ecolibrium3.org/solargarden/> [https://perma.cc/2VNK-NY48] (last visited Oct. 8, 2025) (describing public design workshops and acknowledging funding that flowed from NOAA to the State of Minnesota); *see generally* GABE EPSTEIN, CLEAN ENERGY STATES ALL., STRENGTHENING A MINNESOTA COMMUNITY WITH SOLAR AND RESILIENCE (2023), <https://www.cesa.org/wp-content/uploads/Minnesota-Case-Study.pdf> [https://perma.cc/L98U-B22H] (sharing a case study on implementing renewable energy projects to benefit low-income communities).

¹⁷⁴ Macy, *supra* note 18, at 144.

¹⁷⁵ See Massachusetts v. EPA, 549 U.S. 497, 528 (2007) (holding the Clean Air Act's term "air pollutant" includes carbon dioxide).

¹⁷⁶ Juliana v. United States, Civ. No. 15-CV-01517-AA, 2023 WL 3750334 (D. Or. June 1, 2023).

¹⁷⁷ See Press Release, Our Children's Trust, Supreme Court Denies Cert in *Juliana*; Legacy of Youth-Led Climate Lawsuit Lives On, (Mar. 24, 2025), <https://static1.squarespace.com/static/655a2d016eb74e41dc292ed5/t/67e16f3acf84c27786e9c14e/1742827322618/2025.24.03.JulianaCertDeniedPR.FINAL.pdf> [https://perma.cc/MJL2-SP4A] (contextualizing the Supreme Court's determination to deny writ of certiorari on the Ninth Circuit's ruling that plaintiffs' claims lacked redressability for standing purposes).

¹⁷⁸ Youth plaintiffs have seen losses in other jurisdictions as well. *E.g.*, G.B. v. EPA, No. CV 23-10345-MWF (AGRx), 2025 WL 578354, at *1 (C.D. Cal. Feb. 11, 2025) (granting federal defendants' motion to dismiss for lack of subject matter jurisdiction); Natalie R. v. State, 567 P.3d 550, 556 (Utah 2025) (upholding lower court's determination that it lacked subject matter jurisdiction). For an argument that state right-to-remedy constitutional provisions are a more promising avenue for state constitutional litigation over climate change, see Paul Blakeslee, Note, "Certain Remedy Afforded for Every Wrong": *State Constitutional Right-to-Remedy Provisions as a Vehicle for Climate Litigation*, 104 B.U. L. REV. 1829 (2024).

¹⁷⁹ See Joseph Winters, *The World's Biggest Youth Climate Lawsuit Lost in Court, But it 'Changed the World'*, GRIST (Mar. 27, 2025), <https://grist.org/justice/juliana-v-united-states-climate-lawsuit-supreme-court-changed-the-world/> [https://perma.cc/BQV5-6K8A] (noting that *Juliana* "precipitated a rapid increase in such cases").

¹⁸⁰ See *Held v. State*, 560 P.3d 1235 (Mont. 2024) (recounting litigation and upholding plaintiffs' victory).

findings of fact” that climate change was harming Montana.¹⁸¹ And it held that the state constitution’s right to a clean and healthful environment extended to anthropogenic climate change despite its global nature: “We reject the argument that . . . [the State would have] a free pass to pollute the Montana environment just because the rest of the world insisted on doing so.”¹⁸² And in Hawai‘i, a similar case resulted in a historic settlement under which the state “acknowledges the constitutional rights of Hawai‘i’s youth to a life-sustaining climate and conforms the commitment by [the state transportation agency] to plan and implement transformative changes . . . to achieve the state’s goal of net-negative emissions by 2045.”¹⁸³ Among the agreement’s potentially transformative provisions is one to create a volunteer youth council to advise the state agency on its mitigation and adaptation commitments.¹⁸⁴

Transformation was also part of the thinking behind some of the efforts at the Biden DOE. These efforts were inspired by the vision that energy justice policy initiatives could contribute to a bigger shift beyond a single project or community. Other examples of such efforts may be found in state-level grants for food waste prevention and support of urban farms,¹⁸⁵ proposals for racial impact statements in local government decisionmaking,¹⁸⁶ restorative justice programs,¹⁸⁷ and collaborative legal approaches.¹⁸⁸ And while these examples stem from—or are adjacent to—legal systems, of course, that is neither necessary nor sufficient. Consider too the community-building gift economies fostered by Buy Nothing groups¹⁸⁹ and free clothing exchanges.¹⁹⁰ Or community-driven food

¹⁸¹ *Id.* at 1248.

¹⁸² *Id.*

¹⁸³ Press Release, Josh Green, M.D., Governor, Historic Agreement Settles Navahine Climate Litigation (June 20, 2024), <https://governor.hawaii.gov/newsroom/office-of-the-governor-news-release-historic-agreement-settles-navahine-climate-litigation/> [<https://perma.cc/367B-GFDG>].

¹⁸⁴ *Id.*

¹⁸⁵ See *Food Waste Prevention*, OREGON DEPT OF ENV’T QUALITY, <https://www.oregon.gov/deq/ghgp/certa/Pages/food-waste-prevention.aspx> [<https://perma.cc/NCM4-N9AE>] (last visited Oct. 2, 2025).

¹⁸⁶ See, e.g., Tom I. Romero, II, *The Color of Local Government: Observations of a Brown Buffalo on Racial Impact Statements in the Movement for Water Justice*, 25 CUNY L. REV. 241, 258–279 (2022) (centering the voices of racially minoritized communities in prescribing new approaches to overcome water injustices).

¹⁸⁷ E.g., *Three Core Elements of Restorative Justice*, RESTORATIVE JUST. EXCH., <https://restorativejustice.org/what-is-restorative-justice/three-core-elements-of-restorative-justice/> [<https://perma.cc/WAE6-DNPP>] (last visited Oct. 2, 2025).

¹⁸⁸ E.g., *What is the Collaborative Process?*, D.C. ACAD. OF COLLABORATIVE PROS., <https://www.collaborativepracticedc.com/collaborative-process/> [<https://perma.cc/FKR6-AGXJ>] (last visited Oct. 2, 2025).

¹⁸⁹ BUY NOTHING, <https://buynothingproject.org/about> [<https://perma.cc/UG6C-5YGY>] (last visited Oct. 2, 2025) (“We exist to build resilient communities where our true wealth is the forged connection between neighbors.”).

¹⁹⁰ E.g., *The Loop & Textile Reuse*, SUSTAINABLE GW, <https://sustainability.gwu.edu/loop> [<https://perma.cc/ZRD4-MQM6>] (last visited Oct. 2, 2025).

system transformations.¹⁹¹ Readers will certainly identify many additional examples in their own communities.

Shift in Consciousness. Macy cautions that the progress facilitated by structural change cannot endure without deeply rooted values of interdependence, which are nourished through “cognitive, spiritual, and perceptual revolution.”¹⁹² Indeed, this is the caution behind the IIJA and IRA. The statutes offer inroads to structural change but are not durable if they are not part of a meaningful shift in how we orient to one another and the world. What does this mean for the legal system—including principles of administrative law that facilitate the undermining of climate and justice initiatives over time? A starting point is to recognize that the legal system both reflects and generates social values.¹⁹³ As actors within it, we can nurture commitments to acting with care, and practice aligning our holding actions and efforts for systemic change with these personal commitments. These are practices toward interdependence,¹⁹⁴ and they can provide both motivation for continued effort and inspiration for the creativity that can move us in new directions.

V. CONCLUSION

This Article has used the frame of Joanna Macy’s Great Turning to critique the use of industrial policy as a means of promoting enduring systemic change in climate and justice. Although the IIJA and IRA offered possibilities toward such change, these statutes also worked adversely, further entrenching the status quo. Our system of administrative law does not likely stand to meaningfully facilitate such change, given that it too reflects default presumptions and business-as-usual proclivities. Yet there are a host of ways for lawyers, scholars, jurists, and policymakers to participate in both holding actions and efforts to promote structural change. The call of this Article is to keep sight of creativity, working to align activities with a different vision altogether in service of a more just and sustainable future.

¹⁹¹ For an example, farmer-to-farmer agroecological training and support is making Puerto Rico more sustainable and resilient despite that before Hurricane Maria’s devastation, eighty-five percent of the island’s food was imported. For a deeper exploration of the work of Organización Boricuá Agricultura Ecológica de Puerto Rico, a leader in this effort and winner of the U.S. Food Sovereignty Alliance’s Food Sovereignty Prize, see Heather Gies, *Agroecology as a Tool of Sovereignty and Resilience in Puerto Rico After Hurricane Maria*, CIVIL EATS (Oct. 19, 2018), <https://civileats.com/2018/10/19/agroecology-as-a-tool-of-sovereignty-and-resilience-in-puerto-rico-after-hurricane-maria/> [https://perma.cc/F2NA-GLFR].

¹⁹² MACY, *supra* note 18, at 145; see also SARA M. EVANS & HARRY C. BOYTE, *FREE SPACES: THE SOURCES OF DEMOCRATIC CHANGE IN AMERICA* 66 (1992) (regarding impact of community education programs, “[i]mportant as any changes in public law and formal code were the transformations in the life of communities themselves.”).

¹⁹³ Mezey, *supra* note 33, at 46–47.

¹⁹⁴ For a summary of some of this thinking, see HAGA, *supra* note 14, at 112–16 (engaging the concept of interdependence through a host of traditions and nonviolent leaders from across the world).